

CHARLES J. BABINGTON, ET AL.

IBLA 75-583

Decided September 30, 1975

Appeal from rejection by Eastern States Office, Bureau of Land Management, of request for return of filing fees submitted with rejected noncompetitive oil and gas lease offers.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Drawings

Filing fees may be retained when drawing entry cards made on reproduced forms are rejected.

APPEARANCES: Charles J. Babington, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Charles J. Babington, Ann H. Babington, and M. R. Babington appeal from a rejection by the Eastern States Office, Bureau of Land Management (BLM), of their request for the return of filing fees submitted with drawing entry cards during the April simultaneous filing period. The drawing entry cards had been properly rejected because they were not made on authorized forms but on reproduced forms.

On April 24, 1975, each appellant filed drawing entry cards on seven different parcels using reproduced forms. A regulation requires that simultaneous offers be submitted on a form approved by the BLM Director. 43 CFR 3112.2-1(a). Instruction Memorandum 75-145 of March 26, 1975, from Associate Director George Turcott,

BLM, instructed the State Directors that reproductions of the drawing entry cards are not authorized and are not to be accepted. 1/ The April 21, 1975, Eastern States Office "Notice of Lands Available for Oil and Gas Leasing" stated: "Reproduction of the franked postal entry card is not authorized and offers filed on copies or facsimiles of that form will not be accepted for inclusion in the drawing." This requirement was properly applied to the April simultaneous filings. See V. J. Malloy, 20 IBLA 327 (1975). 2/ Appellants do not contest the rejection of their entry cards but seek the return of their fees.

Appellants contend that the fees should be returned because the drawing entry cards were not included in a drawing. In support of their contention that this is a reason for returning the fees, appellants point to an April 25, 1975, letter from the Associate Director, BLM, to State Directors which concerns simultaneously filed offers. 3/ The letter states that entries rejected for four specified reasons would be returned with filing fees. Entry cards which do not specify the parcel number are to be rejected but the fees retained. The letter then states that all other entries are to be included in the drawing, but that a successful drawee's offer will be rejected if a reproduced form has been used.

We find no merit in appellants' theory that the retention of the fee and the right of appeal depend on participation in the drawing. 4/ Furthermore, there is no ambiguity in the April 26 letter; it allows for the return of fees in only four specified situations, none of which is relevant here.

1/ The letter notes that the use of the entry card form with prepaid postage was expressly authorized by the U.S. Postal Service, and any reproduction thereof may violate regulations promulgated under 18 U.S.C. § 501 which provides for fines up to \$500 and up to five years' imprisonment for printing postal cards or stamped envelopes.

2/ V. J. Malloy, *supra*, sets forth the terms of the March 26, 1975, Memorandum, including the provisions that the April 1975 notice of lands available for oil and gas leasing would state reproduced entry cards would not be accepted.

3/ By its own terms, the April 25 letter applies only to the May drawing and drawings held thereafter.

4/ Appellants' reasoning is not clear. If their offers had been placed in the drawing and selected, no lease could have been issued because authorized drawing cards were not used. Further, appellants' right of appeal does not depend on participation in a drawing but is governed by 43 CFR 4.410.

[1] Moreover, the retention of the fees, far from being unwarranted, is in full accord with the law and sound public policy. Filing fees are permitted by statute and established by regulation. 43 U.S.C. § 1371 (1970); 43 CFR 3112.2-1(a)(1). Because there was a cost to the Government for processing the filing of the offers, even though the offers were rejected, the retention of the fees is reasonable. See Albert E. Mitchell, III, 20 IBLA 302 (1975). Accordingly, filing fees may be retained when drawing entry cards made on reproduced forms are rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

